

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHAWNA REID,

Defendant.

CASE NO. CR19-117 JLR

**UNITED STATES' OPPOSITION
TO DEFENDANT'S MOTION TO
COMPEL PRODUCTION OF
GRAND JURY MATERIAL**

The United States of America, by and through David L. Jaffe, Chief of the Department of Justice Organized Crime and Gang Section, and Matthew K. Hoff, Trial Attorney, respectfully submits this opposition to Defendant Shawna Reid's Motion to Compel Production of Grand Jury Material. [Docket #55].

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

On three separate occasions in 2017, members of the Federal Bureau of Investigation (FBI) and the Seattle Police Department (SPD) interviewed Defendant Shawna Reid ("the Defendant") about her prior association with an individual identified in the Indictment as Suspect #1. These interviews were documented in the investigators'

1 notes and written reports. Reid Sealed Exhibits 2 through 7. Specifically, the investigators
2 asked the Defendant on August 23, 2017, if Suspect #1 ever told her about Suspect #1's
3 involvement in a murder. Reid Sealed Exhibit 4 at 2. The Defendant replied "yes" and
4 then told the investigators, unprompted, that Suspect #1 bragged to her about involvement
5 in the murder of a "judge or an attorney that lives on top of a hill." *Id.* However, according
6 to the Defendant, Suspect #1 never informed her about the specifics of Suspect #1's
7 involvement in the murder. *Id.* The Defendant told investigators that she believed Suspect
8 #1 was simply bragging about the murder to look tough; therefore, she never took the
9 information seriously. *Id.* During the interview, the Defendant told investigators that she
10 recalled Suspect #1 driving her by the house where the murder occurred and she
11 remembered the house was on a hill. *Id.* The Defendant then told the investigators that
12 Suspect #1 told her that the man who was killed was an "attorney general or a judge." *Id.*
13 at 5. The interview ended when the Defendant told the investigators that she had to leave
14 to attend a sibling's court appearance. *Id.*

15 During a subsequent interview on August 25, 2017, the Defendant denied that she
16 told the investigators two days earlier about Suspect #1's involvement in the murder. Reid
17 Sealed Exhibit 5 at 1. On that date, the Defendant told the investigators that what she
18 actually told investigators during the August 23, 2017 interview was that Suspect #1 drove
19 her by a house on a hill and said that he had family or a former employer that lived in the
20 house, and that, in fact, that family member or former employer was a judge, an attorney,
21 or an attorney general. *Id.* When the investigators asked the Defendant if she remembered
22 their previous conversation regarding the murder, she repeatedly denied making the
23 statements about Suspect #1's involvement in the murder. *Id.* at 1-2.

24 On December 15, 2017, investigators, along with a prosecutor, interviewed the
25 Defendant a third time. Reid Sealed Exhibit 7. During this interview, the Defendant
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1 admitted that she did, in fact, respond in the affirmative when the investigators asked her
2 if Suspect #1 ever spoke to her about his involvement in a murder. *Id.* at 1. However, on
3 this date, the Defendant said she later realized that she misspoke or was confused about the
4 question, and believed she was responding to a different question from the investigators
5 but could not explain what that other question was. *Id.* Further, the Defendant could not
6 provide the investigators with an explanation as to why she would have provided the
7 investigators with information about a “judge or an attorney” who “lives on top of a hill.”
8 *Id.*

9 On February 28, 2018, the Defendant testified before a Federal Grand Jury in the
10 Western District of Washington (Seattle) about her prior statements to the investigators
11 regarding Suspect #1’s involvement in the murder of “a judge or an attorney.” Reid Sealed
12 Exhibit 9. Specifically, the Defendant was asked about the information provided to her by
13 Suspect #1 about Suspect #1’s involvement in the murder of a judge or lawyer who “lives
14 on top of a hill.” *Id.* at 16-24. During the Defendant’s testimony, she affirmatively denied
15 that Suspect #1 told her about any involvement in the murder of a judge, prosecutor or
16 attorney general who lived on a hill and that Suspect #1 drove her by the house where the
17 murder occurred. *Id.* Additionally, when asked, the Defendant denied telling investigators
18 during her first interview on August 23, 2017 that Suspect #1 bragged about being involved
19 in the murder of a judge or attorney who lived on a hill. *Id.* at 17-19. The Defendant also
20 specifically denied telling investigators during her first interview that Suspect #1 bragged
21 that the murder victim was someone of importance like a judge or an attorney general. *Id.*
22 at 17.

23 On June 20, 2019, a different Federal Grand Jury in the Western District of
24 Washington (Seattle) charged Defendant Reid in a two-count indictment with False
25 Declarations before the Grand Jury (Count One), in violation of 18 U.S.C. § 1623; and
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1 Obstruction of Justice (Count Two), in violation of 18 U.S.C. § 1503. The allegations stem
2 from Defendant Reid’s denials during her testimony before the Grand Jury on February 28,
3 2018, regarding the statements she made to investigators during her August 23, 2017
4 interview about Suspect #1’s involvement in a murder.

5 **II. GOVERNING LAW**

6 The government’s production obligations in this federal criminal case are dictated
7 by Rule 16(a) of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3500 (the “Jencks
8 Act”), constitutional requirements for the disclosure of material evidence and information
9 favorable to the defendant, as described in *Brady v. Maryland*, 373 U.S. 83 (1963), and
10 *Giglio v. United States*, 403 U.S. 150 (1972), and WDMA Local Criminal Rule 16. None
11 of these sources of authority provide a basis for the Defendant’s demand for “all aspects of
12 the grand jury proceedings, including all witness testimony, leading to the indictment in
13 this matter.” Docket #54 at p. 1.

14 Indeed, Rule 16(a) expressly exempts witness statements, which include grand jury
15 testimony, from its coverage. It states that “[n]or does this rule authorize the discovery or
16 inspection of statements made by prospective government witnesses except as provided in
17 18 U.S.C. §3500.” Fed. R. Crim P. 16(a)(2). Further, Fed. R. Crim. P 16(a)(3) states that
18 Rule 16 “does not apply to the discovery or inspection of a grand jury’s recorded
19 proceedings, except as provided in Rules 6, 12(h), 16(a)(1), and 26.2.” And none of these
20 four rules cited in Fed. R. Crim P. 16(a)(3) provides support for the Defendant’s
21 compulsion motion.

22 Rule 12(h) applies to suppression hearings and thus is inapplicable here where no
23 suppression motion has been filed and no hearing is scheduled. Rule 16(a)(1) requires the
24 government to produce certain categories of information to the defendant—the defendant’s
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1 own oral and written statements; the defendant's criminal record; certain relevant
2 "documents and objects," such as those that the government will admit in its case-in-chief
3 or that belong to the defendant; reports of examinations and tests; and information about
4 expert witness testimony—but provides no basis for wholesale disclosure of grand jury
5 transcripts that fall outside these categories. Significantly, as to a grand jury matter falling
6 within one of these categories—the Defendant's own grand jury testimony—the
7 government promptly made production of that grand jury transcript to the defense.
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9 For present purposes, Rule 26.2 simply reiterates the relevant obligations in the
10 Jencks Act, 18 U.S.C. § 3500, obligating the government to produce statements of
11 testifying witnesses. *See, e.g., United States v. Fort*, 478 F.3d 1099, 1102 n.4 (9th Cir.
12 2007) (citing both 18 U.S.C. § 3500 and Rule 26.2 for the proposition that "[t]he Jencks
13 Act requires prosecutors to turn over to the defense statements made by testifying witnesses
14 if those statements are in the prosecutor's possession"). But these rules governing witness
15 statements do the Defendant no good here because the production obligation ripens only
16 *after* the witness has testified on direct examination. *See* 18 U.S.C. § 3500(a) ("In any
17 criminal prosecution brought by the United States, no statement or report in the possession
18 of the United States which was made by a Government witness or prospective Government
19 witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection
20 until said witness has testified on direct examination in the trial of the case."); Fed. R. Crim.
21 P. 26.2 ("After a witness other than the defendant has testified on direct examination, the
22 court, on motion of a party who did not call the witness, must order an attorney for the
23 government or the defendant and the defendant's attorney to produce, for the examination
24 and use of the moving party, any statement of the witness that is in their possession and
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1 that relates to the subject matter of the witness’s testimony.”) (emphasis added). Further,
2 this Court’s local rules provide that “[t]he attorney for the government is not required . . .
3 to produce any statements of witnesses which fall within the purview of 18 U.S.C. § 3500
4 and Fed. R. Crim. P. 26.2, until such time as required under those provisions.” WDWA
5 Local Rule 16(a)(2)(E).
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7 This leaves Rule 6. Significantly, Rule 6 is not a rule of disclosure. Indeed, the
8 relevant subsection, Rule 6(e), is a *secrecy* provision, prohibiting disclosure of “a matter
9 occurring before the grand jury,” Fed. R. Crim. P. (e)(2)(B), unless a specific exception
10 applies. The need for grand jury secrecy is “compelling” given that the grand jury is a
11 cornerstone of the criminal justice system, holding a “high place . . . as an instrument of
12 justice.” *Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395, 399 (1959) (quoting
13 *Costello v. United States*, 350 U.S. 359 (1956)). As the Supreme Court explained in
14 *Pittsburgh Plate Glass*, the grand jury is “convened as a body of laymen, free from
15 technical rules, acting in secret, pledged to indict no one because of prejudice and to free
16 no one because of special favor.” 360 U.S. at 399 (internal quotation marks omitted). “To
17 make public any part of its proceedings would inevitably detract from its efficacy,” as
18 “[g]rand jurors would not act with that independence required of an accusatory and
19 inquisitorial body.” *Id.*; see also *Douglas Oil Co. of California v. Petrol Stops Nw.*, 441
20 U.S. 211, 218 (1979) (“We consistently have recognized that the proper functioning of our
21 grand jury system depends upon the secrecy of grand jury proceedings.”). The purposes
22 of grand jury secrecy are enumerated in *Douglas Oil* and include “insur[ing] the utmost
23 freedom to the grand jury in its deliberations” and “encourag[ing] free and untrammelled
24 disclosures by persons who have information with respect to the commission of crimes.”
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1 441 U.S. at 219 n.10 (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681-
2 682 n.6 (1958)).

3 The Defendant relies on two exceptions to the general rule of grand jury secrecy,
4 both set out in Federal Rule of Criminal Procedure 6(e)(3)(E):
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6 The court may authorize disclosure – at a time, in a manner, and subject to
7 any other conditions that it directs – of a grand-jury matter:

- 8 (i) preliminarily to or in connection with a judicial proceeding; [or]
9 (ii) at the request of a defendant who shows that a ground may exist to
10 dismiss the indictment because of a matter that occurred before the grand
11 jury.

12 In order to obtain access to a grand jury matter under one of these subsections, a
13 party must demonstrate that the subsection applies and, in addition, show a “particularized
14 need” for the sought grand jury matter. *Dennis v. United States*, 384 U.S. 855, 870 (1966).
15 “A trial judge should order disclosure of grand jury transcripts only when the party seeking
16 them has demonstrated that a ‘particularized need exists...which outweighs the policy of
17 secrecy.’” *United States v. Walczak*, 783 F.2d 852, 857 (9th Cir. 1986) (quoting *Pittsburgh*
18 *Plate Glass Co. v. United States*, 360 U.S. at 400). The secrecy of grand jury proceedings
19 “must not be broken except where there is a compelling necessity” and the necessity “must
20 be shown with particularity.” *United States v. Procter & Gamble Co.*, 356 U.S. at 682.

21 In order to determine that there is a particularized need, a court must find “(1) that
22 the desired material will avoid a possible injustice, (2) that the need for disclosure is greater
23 than the need for continued secrecy, and (3) that only the relevant parts of the transcripts
24 should be disclosed.” *United States v. Plummer*, 941 F.2d 799, 806 (9th Cir. 1991) (citing
25 *Douglas Oil Co.*, 441 U.S. at 222)). The burden of establishing this particularized need
26 rests with the party seeking disclosure. *Douglas Oil Co.*, 441 U.S. at 223. “To show a
compelling and particularized need, the private party must show ‘circumstances had

1 created certain difficulties peculiar to this case, which could be alleviated by access to
2 specific grand jury materials, without doing disproportionate harm to the salutary purpose
3 of secrecy embodied in the grand jury process.’” *United States v. Aisenberg*, 358 F.3d
4 1327, 1348-49 (11th Cir. 2004) (quoting *United States v. Elliott*, 849 F.2d 554, 558 (11th
5 Cir. 1988)). A defendant requesting disclosure of grand jury materials must show a
6 necessity to avoid possible injustice in another judicial proceeding, that the need must
7 outweigh the need for continued secrecy, and the request must be structured to cover only
8 the material needed. *United States v. Sells Engineering, Inc., et al.*, 463 U.S. 418, 443
9 (1983) (citing *Douglas Oil Co.*, 441 U.S. at 222-23).

10 **III. ARGUMENT**

11 **A. Defendant Reid is Not Entitled to Disclosure Under Rule 6(e)(3)(E)(i).**

12 The Defendant first seeks disclosure of grand jury testimony pursuant to Rule
13 6(e)(3)(E)(i). Docket #55 at 4. However, this exception to Rule 6(e) does not apply in this
14 case and, in any event, as discussed herein, the Defendant fails to establish a “particularized
15 need” for the requested grand jury material. The unpermitted disclosure of grand jury
16 testimony in this case would pierce the veil of secrecy in grand jury proceedings,
17 potentially disclose information regarding an ongoing investigation, and potentially
18 discourage future witnesses from testifying before the grand jury.

19 Disclosure under Rule 6(e)(3)(E)(i) “is, on its face, an affirmative limitation on the
20 availability of court-ordered disclosure of grand jury materials.” *United States v. Baggot*,
21 463 U.S. 476, 479 (1983). “[T]he Rule contemplates only uses related fairly directly to
22 some identifiable litigation, pending or anticipated.” *Id.* at 480. Thus, “[t]he focus is on
23 the *actual use* to be made of the material. If the primary purpose of disclosure is not to
24 assist in preparation or conduct of a judicial proceeding, disclosure under [Rule
25 6(e)(3)(E)(i)] is not permitted.” *Id.* (emphasis in original). The Defendant claims that the
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1 standard for disclosure pursuant to Rule 6(e)(3)(E)(i) is “easily met” because it is “related
2 fairly directly to some identifiable litigation.” Docket #55 at 4. However, “it is settled that
3 the first exception applies only to situations where the judicial proceeding for which
4 disclosure of grand jury material is sought is a judicial proceeding *different from* the
5 criminal trial authorized by the grand jury’s indictment.” *United States v. Loc Tien Nguyen*,
6 314 F. Supp. 2d 612, 616 (E.D. Va. 2004) (citing *United States v. Procter & Gamble Co.*,
7 356 U.S. 677) (emphasis added). “This is clear because application of the first exception
8 in circumstances like those at bar would render the second exception superfluous, as the
9 first exception would always encompass the second.” *Loc Tien Nguyen*, 314 F. Supp. 2d
10 at 616. Thus, disclosure under Rule 6(e)(3)(E)(i) is improper in the instant case. Even if
11 this exception were applicable, as discussed below, the Defendant has failed to demonstrate
12 a “particularized need” for disclosure of the materials.

13 **B. Defendant Reid is Not Entitled to Disclosure Under Rule 6(e)(3)(E)(ii).**

14 The Defendant also seeks disclosure of the requested Grand Jury materials pursuant
15 to Rule 6(e)(3)(E)(ii). Docket #55 at 4. In the Defendant’s Motion to Dismiss the
16 Indictment (Docket #52), she states that “[t]he defense knowledge of the grand jury
17 proceedings is therefore limited to what is reflected in the transcript of Ms. Reid’s
18 testimony before that body and what she recalls about it. For reasons detailed in the
19 contemporaneously filed Defense Motion to Compel Production of Grand Jury Materials,
20 we seek additional information.” Docket #52 at 11 fn. 3. However, in the Defendant’s
21 instant Motion to Compel Production of Grand Jury Material, she merely asserts, without
22 more, that disclosure under this exception applies because “[g]rounds to dismiss the
23 indictment are precisely what the defense contends.” Docket #55 at 4.

24 But, “[m]ere unsubstantiated, speculative assertions of improprieties in the
25 proceedings do not supply the particular need required to outweigh the policy of grand jury
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1 | secrecy.” *United States v. Ferreboeuf*, 632 F.2d 832, 835 (9th Cir. 1980) (internal
2 | quotation marks and citations omitted); *see also Walczak*, 783 F.2d at 857 (denying
3 | disclosure of grand jury transcripts where the alleged need was not based on facts, and was,
4 | therefore, “speculative”); *United States v. Claiborne*, 765 F.2d 784, 792 (9th Cir. 1985)
5 | (“Speculation cannot justify this court’s intervention into the grand jury’s proceedings.”).
6 | Put simply, Rule 6(e) “is not an invitation to engage in a fishing expedition to search for
7 | grand jury wrongdoing and abuse when there are no grounds to believe that any
8 | wrongdoing or abuse has occurred.” *Loc Tien Nguyen*, 314 F. Supp. 2d at 616.

9 | The Defendant makes the conclusory assertion that “grand jury irregularities and
10 | prosecutorial misconduct” support the disclosure of “the testimony of other grand jury
11 | witnesses.” Docket #55 at 4. As discussed at length in the Government’s Response to
12 | Defendant Reid’s Motion to Dismiss the Indictment (Docket # 61), no irregularities or
13 | prosecutorial misconduct occurred before the grand jury. In *United States v. DeTar*, the
14 | Ninth Circuit upheld the denial of disclosure of grand jury transcripts in order to determine
15 | whether prosecutorial misconduct occurred, stating the defendant “supported his request
16 | for production of grand jury records on nothing but baseless speculation.” 832 F.2d 1110,
17 | 1113 (9th Cir. 1987). The Defendant makes similar baseless and speculative assertions.
18 | Here, the Defendant seeks all the testimony of “other grand jury witnesses, particularly the
19 | two government investigators present for the initial interview of Ms. Reid,” to “better
20 | understand the context of how” the alleged irregularities occurred and to “illuminate the
21 | degree of government attribution.” Docket #55 at 4. Further, the Defendant asserts that
22 | production of the requested grand jury material “would greatly *aid* in resolving the pending
23 | challenge to the indictment.” *Id.* at 5.

24 | However, the Defendant fails to provide, as required, any insight as to how
25 | disclosure of all of the grand jury testimony would help further her alleged claims that
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1 disclosure would resolve the pending challenge, nor how it would allow for a better
2 understanding of the context of the alleged irregularities and degree of government
3 attribution. The Defendant cites her Motion to Dismiss the Indictment as a reason for
4 disclosure but offers no support for a “particularized need” for her broad request and fails
5 to limit the request to cover only needed material. *United States v. Sells Engineering, Inc.*,
6 463 U.S. at 443 (to be entitled to disclosure, a defendant must show a necessity to avoid
7 possible injustice in another judicial proceeding, that the need must outweigh the need for
8 continued secrecy, and the request must be structured to cover only the material needed).
9 The Defendant also fails to establish how disclosure of “the testimony of other grand jury
10 witnesses” will achieve the purposes of better understanding any alleged irregularities or
11 prosecutorial misconduct, of which there was none. The Defendant’s claims are thus the
12 sort of broad and unspecified allegations that prior courts have roundly rejected for reasons
13 to disclose grand jury testimony. Having failed to establish a particularized need for the
14 disclosure of all the grand jury testimony related to this case, the Court should not grant
15 the Defendant her request for large scale disclosure of grand jury testimony and allow her
16 to engage in a fishing expedition.

17 To the extent the Defendant requests “full details of the grand jury proceedings,
18 including instructions the grand jurors were given” (Docket #55 at 2), the Court should
19 also deny the request to disclose these documents. As with her request for the testimony
20 of other grand jury witnesses, the Defendant has similarly failed to establish any
21 particularized need for this information and her request is based on mere speculation.
22 Moreover, the government is not required to provide any legal instructions to the grand
23 jury. *United States v. Larrazolo*, 869 F.2d 1354, 1359 (9th Cir. 1989).

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1 **C. Brady Disclosure.**

2 Lastly, the Defendant asserts that the Court should disclose the grand jury testimony
3 pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). The Government is well aware of its
4 *Brady* obligations and will promptly provide the Defendant with any information or
5 evidence as required by those obligations.

6 **IV. CONCLUSION**

7 For these reasons, Defendant's Motion to Compel Production of Grand Jury
8 Material should be denied.

9 Dated this 14th day of July, 2020.

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11 Respectfully submitted,

12 David L. Jaffe
13 Chief, Organized Crime and Gang Section

14 s/Matthew K. Hoff
15 MATTHEW K. HOFF
16 Trial Attorney